IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:

RUTHRAUFF, INC.,	:	**Bankruptcy No. 03-35738 BM**
	:	
	:	
Debtor	:	**Chapter 11**
NRG OPTIONS, INC.,	:	
	:	
Movant	:	
	:	
v.	:	**Doc. # 352: Motion To Enforce The Distribution Under Debtor's Plan Of Reorganization**
RUTHRAUFF, INC.,	:	
	:	
Respondent	:	
RUTHRAUFF, INC.,	:	
	:	
Movant	:	
	:	
v.	:	**Doc. # 354: Debtor's Objection To Claim**
NRG OPTIONS, INC.,	:	
	:	
Respondent	:	

Appearances: James G. McLean, Esq., for Debtor
Michael E. Flaherty, Esq., for NRG Options, Inc.

MEMORANDUM OPINION

Two matters are ready for decision at this time.

NRG Options, Inc., a general unsecured creditor in this case, has brought a motion to compel debtor Ruthrauff, Inc. to make distribution to it in accordance with the provisions of debtor's confirmed chapter 11 plan of reorganization.

Debtor has responded by objecting to the allowance of NRG's claim. According to debtor, the claim should be disallowed in its entirety.

We conclude for reasons set forth in this memorandum opinion that debtor's objection to NRG's claim must be sustained and that NRG's motion to compel distribution consequently must be denied.

FACTS

Debtor is a mechanical contractor. On November 9, 2000, debtor was awarded a contract for the installation of the HVAC system at the University of Pittsburgh Convocation Center, a new building under construction at the time.

On May 1, 2001, debtor entered into a contract with NRG Options, Inc. which called for NRG to install the automatic temperature control system for the building. Among other things, this entailed connecting and integrating the temperature controls into a campus-wide energy management system. The total contract price was $ 692,800.00.

Debtor was obligated to make progress payments to NRG as work was completed by NRG. Final payment was to occur when the project architect certified that the required work was completed.

NRG encountered numerous problems which hindered its performance. As a consequence, debtor issued four change orders between January 25, 2001, and July 19, 2002, which reduced the overall contract price to $501,084.54.

Debtor made progress payments to NRG totaling $480,477.90 for work it did for the Convocation Center.

NRG's performance deteriorated over time. It did not complete all of the work provided for in the contract. Some of the work it did complete was defective and had to be

remediated by debtor. NRG finally walked out in May of 2002 and ceased working on the project.

Debtor notified NRG in writing on June 28, 2002, that it was taking steps to correct the deficiencies in NRG's performance.

Among other things, debtor brought in Delta Controls, the manufacturer of the temperature controls NRG was supposed to install, to complete the installation. Debtor ultimately paid Delta Controls $12,713.00 for its assistance.

After NRG walked out, debtor had to call in employees from its own in-house service department to complete work left unfinished by NRG. Debtor incurred an additional $181,000.00 in costs at its in-house rate to finish the work.

Bellisario Electric, an electrical contractor hired by NRG to assist it on the project, was not paid in full by NRG for the work it did. It made a demand for payment in the amount of $80,000.00 and filed a claim against debtor's bond for the project. Debtor eventually settled the claim for $22,500.00 and also incurred substantial legal fees in negotiating the settlement with Bellisario Electric.

The contract for the Convocation Center was not the only one between debtor and NRG. Debtor also had awarded two contracts to NRG for work on projects at Sewickley Valley Hospital. The specifics of these contracts are murky at best.

NRG filed a voluntary chapter 11 petition on August 30, 2002. Its case is still pending at the present time.

Debtor filed a voluntary chapter 11 petition of its own on December 18, 2003. The schedules accompanying the petition list assets with a total declared value of

$8,369,868.93 and liabilities totaling $8,730,607.00. NRG is identified on the schedules as having an undisputed general unsecured claim in the amount of $27,598.00.

NRG filed a timely proof of claim in the amount of $100,036.10 in debtor's case on May 18, 2004.

Debtor's amended plan of reorganization provided that, with the exception of one particular creditor, all creditors having allowed general unsecured claims would be paid 85% of the amount of their allowed claims according to a specified schedule.

The plan further provided that, until the case was closed, this court would retain jurisdiction over all matters arising under, arising out of or relating to it. Among other things, jurisdiction was specifically retained to hear and decide all objections to claims that may be pending at or initiated after the date of plan confirmation, except as otherwise provided in the confirmation order.

Debtor's proposed chapter 11 plan of reorganization was confirmed on September 29, 2004.

A post-confirmation order issued and was docketed on September 30, 2004. Among other things, it provided that any claim objection had to be filed and served within ten days of the effective date of the order. Another paragraph of the post-confirmation order provided that any time period established in the order could be extended for cause after notice and a hearing, "but only upon motion filed prior to the deadline established under the relevant paragraph of this order". Juxtaposing these two provisions, it becomes clear that any motion for an extension of the deadline for objecting to a claim had to be filed before the established deadline had passed.

Wasting no time, debtor filed an omnibus motion the next day – i.e., on October 1, 2004 – objecting to more than fifty claims that had been filed. The claim by NRG, however, was absent from the list.

Claiming that its plan had been substantially consummated, debtor filed a motion for a final decree on October 26, 2004. Among other things, debtor asserted that it had made the first scheduled payment to general unsecured creditors having allowed claims in accordance with the plan.

The initial payment to general unsecured with allowed claims was scheduled to occur on November 10, 2004. Even though debtor had not objected to its claim, NRG received no payment on that date.

NRG filed a motion on November 22, 2004, to enforce debtor's confirmed plan and to require debtor to make distribution to it in accordance with the provisions of the confirmed plan.

The next day, on November 23, 2004, debtor responded by objecting to NRG's claim. The objection was filed approximately six weeks after the deadline that was established in the post-confirmation order and without debtor requesting an extension of time to do so before the deadline had passed.

In its response to debtor's objection to its claim, NRG asserted that this court lacked jurisdiction to hear and decide the objection because debtor had not requested an extension of the time for objecting before the deadline had passed.

A final decree issued on December 13, 2004. Jurisdiction was reserved, however, to hear and decide debtor's objection to the claim of NRG and the motion of NRG to compel debtor to make distribution to it.

An evidentiary hearing was held on debtor's objection to the claim of NRG and the above matters are now ready for disposition.

– DISCUSSION –

– I –

As was noted, debtor did not object to NRG's claim before the deadline established in the post-confirmation order and did not request an extension of the time for so doing before it had passed.

NRG asserts that this court consequently lacks jurisdiction to hear and decide debtor's objection and that debtor accordingly should be ordered to make distribution to it according to the confirmed plan.

It is not entirely clear what NRG has in mind when it asserts that this court lacks jurisdiction to hear and decide debtor's objection to NRG's claim.

This court ordinarily has jurisdiction to hear and decide objections to a claim filed by a creditor. Hearing and deciding such a matter is a core proceeding. See 28 U.S.C. § 157 (b)(2)(B).

Upon referral from the district court, a bankruptcy court potentially has jurisdiction pursuant to 28 U.S.C. § 1334 over four types of proceedings: (1) cases under title 11; (2) proceedings arising under title 11; (3) proceedings arising in a case under title 11; and (4)

proceedings related to a case under title 11. *Torkelson v. Maggio (In re Guild and Gallery Plus)*, 72 F.3d 1171, 1175 (3d Cir. 1996).

The first of these categories refers to the bankruptcy petition itself. *In re Marcus Hook Development Park, Inc.*, 943 F.2d 261, 264 (3d Cir. 1991).

The second category consists of proceedings that are created or determined by a specific provision of the Bankruptcy Code. *In re Wolverine Radio*, 930 F.2d 1132, 1144 (6th Cir. 1991), *cert*. *dismissed*, 503 U.S. 978, 112 S.Ct. 1605, 118 L.Ed.2d 317 (1992).

The third category consists of proceedings which, by their very nature, can arise only in the context of a bankruptcy case. *Id*., 930 F.2d at 1144.

The fourth category consists of proceedings whose outcome "could conceivably have an effect on the estate being administered in bankruptcy". *Pacor v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984). The key word here is "conceivably"; certainty or even likelihood is not required. *In re Marcus Hook*, 943 F.2d at 364.

We undoubtedly have subject-matter jurisdiction to hear and decide debtor's objection to NRG's claim because it falls squarely within the scope of category (2) or category (3).

At the very least, debtor's objection to NRG's claim arises by implication under § 502 of the Bankruptcy Code, which provides as follows:

> A claim …, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest … objects.

11 U.S.C. § 502(a). This subsection of the Bankruptcy Code clearly contemplates an objection to a claim within the context of claim allowance.

Debtor's objection to NRG's claim also would appear to qualify as a proceeding arising in a title 11 case. Disposition of an objection to a claim filed in a bankruptcy case would occur only in the context of such a case.

This conclusion is consistent with Article XIV(g) of debtor's confirmed plan, where jurisdiction to hear objections to claims was retained, except as provided in the order of confirmation. The order confirming debtor's plan did not provide otherwise.

NRG, we suspect, would not deny that hearing and determining debtor's objection to the claim of NRG arises under or arises in a title case and is a core proceeding. Its argument concerning lack of subject-matter jurisdiction apparently concerns whether this court *retained* jurisdiction to hear and decide an *untimely* objection to NRG's claim under the facts of this case.

As we understand it, NRG maintains that this court did not retain jurisdiction to entertain debtor's untimely objection to NRG's claim. Neither the confirmed plan nor the post-confirmation order expressly reserved jurisdiction for this court to do so. NRG argues that the post-confirmation order reveals an intention *not* to retain such jurisdiction. Paragraph 8 of the post-confirmation order states that any deadline established therein could be extended for cause, *but only if a motion to that effect was filed before the deadline set elsewhere in the order had passed*. Debtor sought no such extension before the deadline had passed and instead simply objected to NRG's claim six weeks after the deadline had passed.

The assertion that this court lacks jurisdiction to consider and decide debtor's untimely objection to NRG's claim for this reason lacks merit.

The answer to the question whether we ever have jurisdiction to entertain and decide an untimely objection to a claim when the post-confirmation order expressly provides that any request for an extension of the deadline to file such an objection must be filed before the deadline passes and no such request was made is in the affirmative.

Federal Rule of Bankruptcy Procedure 9006(b)(1) applies in such situations. It provides as follows:

> Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required to be done … by order of court, the court for cause shown *may at any time* in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made *before* the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made *after* the expiration of the specified period permit the act *where the failure to act was the result of excusable neglect*.

Even though the deadline for objecting to NRG's claim as prescribed in paragraph 8 of the post-confirmation order requires that a request for an extension of that deadline be made before the passing of the deadline, Federal Rule of Bankruptcy Procedure 9006(b)(1) permits an extension of the deadline upon a showing by debtor that its failure to object in a timely manner was due to "excusable neglect".

According to debtor, its bankruptcy counsel inadvertently omitted NRG's claim from the omnibus objection to some fifty claims it filed the day following the post-confirmation order. Moreover, such omission was not discovered until NRG filed its motion to compel debtor to make distribution to it in accordance with the confirmed plan. Such an inadvertent omission, debtor asserts, qualifies as "excusable neglect" for purposes of Federal Rule of Bankruptcy Procedure 9006(b)(1). From this debtor would have us conclude that we have

discretion to permit it to object to NRG's claim even though the deadline for it's doing so had passed some six weeks earlier.

The seminal case concerning the meaning and application of "excusable neglect" for purposes of Federal Rule of Bankruptcy Procedure 9006(b)(1) is *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993). Whereas the present case involves an allegedly inadvertent failure to object to a claim within the deadline established by order of court, *Pioneer Investment* involved an attorney's alleged inadvertent failure to file a claim within the deadline established by order of court. Despite this difference, the standard for "excusable neglect" set forth in *Pioneer Investment* applies to the present case.

Pioneer Investment rejected a *per se* rule that excusable neglect applies only when an untimely filing was due to circumstances beyond the control of a party confronted with a court-imposed deadline for taking some action. *Pioneer Investment*, 503 U.S. at 387, 113 S.Ct. at 1489.

The fault of the party confronted with a deadline is not the only consideration when determining whether excusable neglect applies to a situation. The inquiry whether one's neglect is "excusable" is essentially equitable. The court is to take into consideration all relevant circumstances surrounding the failure to act in a timely manner. *Chemtron Corp. v. Jones*, 72 F.3d 341, 349 (3d Cir. 1995) (citing *Pioneer Investment*, 507 U.S. at 395, 113 S.Ct. at 1489).

These circumstances include, without limitation, the following: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial

proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Pioneer Investment, 507 U.S. at 395, 113 S.Ct. at 1489.*

Debtor's assertion that it played no role in filing the objection to NRG's claim and that it relied on its bankruptcy counsel to do so does not necessarily excuse debtor from neglecting to object to NRG's claim in a timely manner. A client is held accountable fro the acts or omissions of its attorney. *Pioneer Investment*, 507 U.S. at 395, 113 S.Ct. at 1489. The proper analysis does not focus on whether the client did all that it reasonably could to monitor the conduct of its attorney, but on whether the neglect of the client *and* its attorney was excusable. *Id.*, 506 U.S. at 396-97, 113 S.Ct. at 1489.

Applying the factors enumerated in *Pioneer Investment*, we conclude that debtor would be prejudiced if its objection to NRG's claim were rejected out of hand merely because the objection was untimely. If its objection to NRG's claim is thrown out on that basis, debtor would be required to pay NRG approximately $85,000 in accordance with the provisions of its confirmed plan. Funding of debtor's plan will come from its post-confirmation operations. Requiring debtor to pay NRG when there may be good reason to object to its claim would substantially increase the amount debtor would have to take from post-petition earnings to fully consummate its plan.

Although NRG surely would be prejudiced if debtor's objection to NRG's claim is entertained and sustained, *other* general unsecured creditors with allowed claims just as surely would *not* be prejudiced. Regardless of the outcome of this matter, they will receive 85% of the amount of their allowed claims.

As for the length of the delay and its impact on judicial proceedings in debtor's bankruptcy case, they are minimal. Debtor was late by approximately six weeks late in objecting to NRG's claim. The lateness of debtor's objection has had no great impact on the court or on the progress of this bankruptcy case, as the objection would have to be heard even if it had been timely.

According to debtor's counsel, the tardiness of debtor's objection to NRG's claim was inadvertent. When counsel prepared and filed an omnibus objection to more than fifty claims on the day after the post-confirmation order, it unwittingly failed to include NRG's claim. While such omissions are not to be encouraged, we understand how it could have happened under the circumstances. As regrettable they may be, such mistakes can and occasionally do happen.

Finally, we see nothing indicating that debtor acted in bad faith by filing its objection to NRG's claim when it did. As soon as it became aware of the oversight, debtor's counsel objected to the claim. NRG filed its motion to compel debtor to make distribution to it on November 22, 2004. Upon receipt of the motion, debtor's counsel filed an objection to the claim the very next day. We are confident that debtor acted in good faith in objecting to NRG's claim when it did.

We conclude in light of the foregoing that debtor's failure to object to NRG's claim by the prescribed deadline was the result of excusable neglect and, more importantly, that we have jurisdiction to hear and decide the untimely objection.

– II –

NRG's claim in the amount of $100,036.10 is comprised of three portions. The first is in the amount of $65,928.10 and is for work NRG did under the above contract with debtor for the University of Pittsburgh Convocation Center. The second and third portions in the amounts of $5,478.00 and $28,630.00, respectively, are for work NRG did at Sewickley Valley Hospital under two other contracts it had with debtor.

Debtor maintains in its objection that NRG's claim should be disallowed "in its entirety" and that NRG consequently is not entitled to any distribution pursuant to the confirmed plan of reorganization.

Evidence debtor offered at the evidentiary hearing on its objection to NRG's claim pertained exclusively to NRG's faulty performance under the Convocation Center contract. No evidence was offered concerning NRG's performance under the separate contracts for projects at Sewickley Valley Hospital.

According to NRG, this court "has no jurisdiction" to hear and decide debtor's objection to those portions of its claim pertaining to Sewickley Valley Hospital. Because the Sewickley Valley Hospital contracts were separate from the contract for the Convocation Center and because debtor offered no evidence concerning the Sewickley Valley Hospital contracts, NRG would have us conclude that it is entitled, at the very least, to payment of 85% of those portions of its claim.

NRG's assertion that those portions of its claim for work it did at Sewickley Valley Hospital may not be disallowed for the reason stated lacks merit.

Debtor's objection to the entirety of NRG's claim was based on § 558 of the Bankruptcy Code, which provides as follows:

> The estate shall have the benefit of any defense available as against any entity other than the estate, including statutes of limitation, statutes of fraud, usury, and other personal defenses….

11 U.S.C. § 558.

Section 558 frequently comes into play when a debtor in bankruptcy objects to a claim filed in the case by a creditor. It applies to any pre-petition defenses a debtor in bankruptcy may have to a cause of action or a claim against it. Recoupment and set-off are included among such defenses. If successful, they effectively "net out" what debtor and the creditor owe to one another. *Second Pennsylvania Real Estate Corp. v. Papercraft Corp. (In re Papercraft Corp.)*, 127 B.R. 346, 350 (Bankr. W.D. Pa. 1991). Any defenses that are available under applicable state law[1] are preserved by this provision for the benefit of the bankruptcy estate. *E.Spire Communications, Inc. v. Morris Plumbing and Electric Co. (In re E.Spire Communications, Inc.)*, 293 B.R. 639, 648 (D.Del. 2003).

Under Pennsylvania law, recoupment and set-off are in the nature of counterclaims. Where the underlying cause of action sounds in contract, recoupment may be available to the defendant with respect to the *same* contract or transaction. Where *different* contracts or transactions are at issue, set-off may be available. *Northwestern National Bank v. Commonwealth of Pennsylvania*, 345 Pa. 192, 201 n.3, 27 A.2d 20, 25 n.3 (1942). Put another way, set-off applies where it arises out of a transaction that is "extrinsic" to the plaintiff's cause of action. *M.N.C. Corp. v. Mount Lebanon Medical Center, Inc.*, 510 Pa. 490, 495, 509 A.2d 1256, 1259 (1986).

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1. Pennsylvania law is the applicable law in this instance. Both debtor and NRG are Pennsylvania corporations. Not only were the contracts at issue executed in Pennsylvania law, they concerned work to be performed on projects located in Pennsylvania.

Recoupment seeks to lessen or defeat recovery by the plaintiff and is limited to the amount of the plaintiff's claim. *Household Consumer Discount Co. v. Vespaziani*, 490 Pa. 209, 219, 415 A.2d 689, 694 (1980).

Set-off, by contrast, does not merely seek to lessen or defeat recovery by the plaintiff. It is a cause of action in its own right and seeks affirmative relief. *Kaiser v. Monitrend Investment Management Co.*, 672 A.2d 359, 362-63 (Pa. Cmwlth. 1996).

While it is true that debtor offered no evidence concerning additional costs and expenses it incurred as a result of NRG's performance on the Sewickley Valley Hospital projects, it does *not* thereby follow that these portions of NRG's claim must be allowed in their entirety.

As we understand the evidence offered at the hearing, debtor simultaneously seeks to recoup a portion of the costs and expenses it incurred because of NRG's shoddy and incomplete performance under the contract for the University of Pittsburgh Convocation Center while also seeking to setoff the remainder of those costs and expenses against the amounts it owes to NRG under the contracts for the Sewickley Valley Hospital projects.

Our research indicates that debtor may do this under Pennsylvania law. While maintaining that debtor may not do this, NRG has cited to authority for the proposition it is not permissible.

If, as debtor maintains, the costs and expenses it incurred in correcting NRG's shoddy and incomplete performance under the contract for the Convocation Center in fact exceed the amount of NRG's claim for work it did under that contract, debtor may setoff the excess against amounts NRG is owed for its work on the Sewickley Valley Hospital

projects. Debtor need not offer evidence specifically relating to the Sewickley Valley Hospital projects to prevail on its objection to NRG's claim "in its entirety".

– III –

We now turn to the merits of debtor's objection to the claim of NRG and must determine whether the claim of NRG should be allowed or disallowed.

The burden of going forward with evidence when there is an objection to a claim filed in a bankruptcy case lies with different parties at different stages. The initial burden of going forward lies with the claimant, who must allege sufficient facts to support the claim. If it does so, the claim is *prima facie* valid. *In re Allegheny International, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992). The burden then shifts to the objector to produce evidence which negates the *prima facie* validity of the claim. The objector must produce evidence which, if believed, would defeat at least one of the essential elements of the claim. *Id*. 954 F.2d at 173. If the objector does so, the burden then shifts back to the claimant to prove the validity of the claim by a preponderance of the evidence. Although the burden of production is a shifting one, the burden of persuasion is not; it remains with the claimant throughout. *Id*., 954 F.2d at 173-74.

NRG's claim is *prima facie* valid. Attached to its claim were statements indicating amounts owed to it under each of the contracts that it had entered into with debtor. Also attached to the claim was an aged trial balance.

Debtor produced evidence which negated the *prima facie* validity of NRG's claim that debtor owes it the sum of $100,036.10 for work it performed under the contract for the Convocation Center project and under the contracts for the Sewickley Valley Hospital

projects. More importantly, NRG did *not* produce evidence which overcame debtor's negating evidence and established by a preponderance of the evidence that its claim was valid.

The amount NRG is owed for work it performed for the Convocation Center is not $65,928.10, as NRG claims; it is $20,606.64. Although the original contract price was $692,800.00, change orders initiated by debtor reduced the overall price to $501,084.54. Debtor and NRG stipulated that debtor made progress payments to NRG totaling $480,477.90 for work NRG did on the Convocation Center project.

NRG was not able at the evidentiary hearing to substantiate its assertion the outstanding balance for the work it did on the Convocation Center project was $65,928.10. When asked about this purported balance, NRG's president at the time conceded that he could not account for how this amount was arrived at.

Assuming for the sake of argument that NRG's claim is allowable, the total amount of its claim would have to be decreased from $100,036.10 to $54,714.64 ($20,606.64 + $5,478.00 + $28,630.00 = $54,714.64).

As was noted previously, debtor incurred additional costs and expenses because of NRG's failure to perform as was required under the contract for the Convocation Center project. Debtor expended $12,713.00 to have Delta Controls come in and install the temperature controls after NRG walked off the job site. Debtor also incurred $181,000.00 in labor costs to have its own in-house service department complete work that NRG failed to do. Finally, it cost debtor $22,500.00 to settle a demand for payment by Bellisario

Electric, which NRG had hired to do some of the work NRG was required to do on the Convocation Center project.

The total amount of these additional costs and expenditures incurred by debtor, all of which were due to NRG's failure to perform in accordance with the contract for the Convocation Center project, is $216,213.00 ($12,713.00 + $181,000.00 + $22,500.00 = $216,213.00). This amount far exceeds the outstanding amount of $54,714.64 debtor owes to NRG.

It follows from what was determined in a previous section of this memorandum opinion that debtor may recoup the entire $20,606.64 that it owes to NRG for the Convocation Center project. This portion of NRG's claim is reduced to zero.

It also follows that debtor may set off the remaining $195,606.36 in additional costs and expenses ($216,213.00 - $20,606.64 + $195,606.36) against the $34,108.00 ($5,478.00 + $28,630.00 = $34,108.00) owed to NRG for the two Sewickley Valley Hospital projects. This effectively also reduces the amount owed to NRG for these projects to zero.

Although debtor ordinarily would be entitled to a judgment in its favor for the amount by which the remaining $195,606.36 exceeds $34,108.00, debtor has not sought such relief. For reasons most likely having to do with the fact that NRG also is in bankruptcy, debtor did not request such relief in its own bankruptcy case and appears satisfied with reducing the allowed amount of NRG's claim in this case to zero.

We conclude in light of all of the foregoing that debtor's objection to the claim of NRG must be sustained. We further conclude that NRG's motion to compel debtor to make

distribution to it in accordance with the provisions of debtor's confirmed chapter 11 plan of reorganization must be denied because the allowed amount of NRG's claim is zero.

An appropriate order shall issue.

/s/
BERNARD MARKOVITZ
U.S. Bankruptcy Judge

Dated: **June 16, 2005**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:

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Debtor	:	**Chapter 11**
NRG OPTIONS, INC.,	:	
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v.	:	**Doc. # 352: Motion To Enforce The Distribution Under Debtor's Plan Of Reorganization**
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NRG OPTIONS, INC.,	:	
	:	
Respondent	:	

ORDER OF COURT

AND NOW, this **16th** day of **June**, 2005, for reasons set forth in the foregoing memorandum opinion, it hereby is **ORDERED**, **ADJUDGED** and **DECREED** that:

(1) the motion (Doc. # 352) of NRG Options, Inc. to enforce distribution to it according to the provisions of debtor's confirmed chapter 11 plan of reorganization be and hereby is **DENIED**; and

(2) debtor's objection (Doc. # 354) to the claim of NRG Options, Inc. be and hereby is **SUSTAINED**. The amount of said claim is **ZERO**.

It is **SO ORDERED**.

/s/
BERNARD MARKOVITZ
U.S. Bankruptcy Judge

cm: James G. McLean, Esq.
Nathaniel H. Schmitt, Esq.
Manion McDonough & Lucas, P.C.
U.S. Steel Tower - Suite 1414
600 Grant Street
Pittsburgh, PA 15219

Michael E. Flaherty, Esq.
Karlowitz Cromer & Flaherty, P.C.
1201 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219

Patrick W. Carothers, Esq.
Paula A. Schmeck, Esq.
Thorp Reed & Armstrong, LLP
One Oxford Centre - 14th Floor
301 Grant Street
Pittsburgh, PA 15219-1425

Norma Hildenbrand, Esq.
Office of United States Trustee
Liberty Center - Suite 970
1000 Liberty Avenue
Pittsburgh, PA 15222